IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 138 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KHEMCHAND JIVABHAI

Versus

LAKHUBHAI LAXMANBHAI CHORASIYA

Appearance:

1. Civil Revision Application No. 138 of 2004

MR DP KINARIWALA for Petitioner No. 1-14

MR AR GUPTA for Respondent No. 1

RULE SERVED for Respondent No. 2-5,8-9

SERVED BY AFFIX.-(R) for Respondent No. 6

MRS KRISHNA G RAWAL for Respondent No. 7

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 15/10/2004

ORAL JUDGEMENT

Khemchand Jivabhai and others, applicants, have filed this Revision Application under Section 115 of the Civil Procedure Code against judgement and order passed by the learned Civil Judge (J.D.) at Sanand dated 18.10.2002. The learned Judge by his impugned order dismissed the application of delay condonation in preferring a restoration application filed by the applicants. Heard Mr. Kinariwala, learned counsel for the applicants. Heard Mr. A.R. Gupta for respondent No. 1. Respondent No. 2 to 5, 8 to 9, are served. Respondent No. 6 is also served by affixing. Heard Ms. Krishna Rawal for respondent No. 7.

2. The facts giving rise to this application are as under:

2.1 The applicants have filed Suit No. 26 of 1995 before the learned Civil Judge (J.D.) at Sanand for permanent injunction and restraining the opponents from making construction on the land admeasuring 1275 sq. mtrs. and 546 sq. mtrs. in block No. 35 of village Manipur, Taluka Sanand, Dist. Ahmedabad and further to restrain the opponents from interfering with the possession as well as use by the present applicants. The applicants further submitted that the said suit was kept for recording of evidence on 29.11.2001. On that day, the present applicant was sick and therefore the advocate of the applicant had moved an application at Exh. 65 for an adjournment.

2.2 The learned Judge, however, rejected the said application for adjournment on the ground that the case is pending for evidence since long. Ample opportunity has been given to the advocate of the plaintiff so as to enable him to keep the plaintiff present and in spite of this fact, the plaintiff had not remained present. The learned Judge further observed that for the sickness of the applicant, no certificate has been produced and accordingly, the learned Judge by his order dated 29.11.2001 had dismissed the suit filed by the applicant on the ground of non-prosecution.

2.3 The applicant states that the applicant came to know about the order on 17.1.2002 and therefore he had applied for certified copy which was given to the applicant on 23.1.2002. Therefore, the applicant has moved Restoration Application No. 8 of 2002 in February, 2002. As there was a delay in filing the Restoration Application, the applicant has moved an application for condonation of delay.

2.4 In the said application it was stated that the applicant was sick and therefore he was bedridden for six months and therefore he could not remain present before the Court. It was further submitted that on 29.11.2001 the applicant all of a sudden got sick and therefore he could not remain present and accordingly, on telephone he has informed the advocate to take a date and accordingly the learned advocate had given application Exh. 65 for an adjournment. In para 6, the present applicant has specifically stated that on 17.1.2002, the applicant came to know about the dismissal of the suit and therefore on the same day, he has applied for certified copy which was delivered to him on 23.1.2002 and because of his sickness, he was unable to move an application in time and therefore the delay has caused in filing the restoration application. Hence the delay may be condoned.

2.4 The learned Judge vide order dated 8.10.2002 was pleased to dismiss the application for condonation of delay. The learned Judge observed that for delay of each day sufficient and valid reasons have to be given and the application was dismissed on 29.11.2001 as sufficient reason for delay in filing the application was not given.

3 Mr. Kinariwala, learned advocate for the applicants, states that the words "sufficient cause" in Section 5 of the Limitation Act have be to liberally construed and for that purpose he ha relied on the judgement of the Hon'ble Supreme Court in the case of COLLECTOR, LAND ACQUISITION, ANANTNAG VS. KATIJI reported in AIR 1987 SC 1353 particularly para 3 where the Hon'ble Supreme Court has laid down the principle under what circumstances the words "sufficient cause" have to be construed and how the same have to be liberally construed. It has been stated that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

4. In this case the applicant was sick for a long time and therefore he could not remain present. It is no doubt true that the application was dismissed originally on 29.11.2001 whereas the delay condonation application and restoration application has been filed in February, 2002. Normally, the litigant should be vigilant and try to file application as early as possible but here due to sickness of the applicant which was beyond the control of the applicant, he could not file the application in time and hence the applicant has been able to show sufficient cause. As per the principle laid down by the Hon'ble

Supreme Court, the words "sufficient cause" have to be construed liberally.

5. Mr. A.R. Gupta, learned counsel for respondent No. 1 and Ms. Krishna Rawal, learned counsel for respondent No. 7 have tried to support of the order of the learned Judge.

6. I have considered the facts and circumstances of the case. In my view, the order passed by the learned Judge not to condone the delay is erroneous, illegal and liable to set aside. The order of the learned Judge is not in consonance with the judgement of the Hon'ble Supreme Court in the case of COLLECTOR, LAND ACQUISITION, ANANTNAG VS. KATIJI (supra). I, therefore, quash and set aside the order of the learned trial Judge. The Revision Application is therefore allowed. The learned Judge is requested to hear the remaining part of the suit on merits of the matter. Rule is made absolute. No order as to costs.

7. Mr. Kinariwala, learned counsel for the applicants states that in the trial court the applications will co-operate with the hearing of the matter.

(K.M. MEHTA, J)
(pkn)